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## THE LEGALITY OF THE PACIFIC BLOCKADE II\*

### FRENCH BLOCKADE OF MEXICO, 1838.

The French blockade of Mexican ports in 1838 is usually mentioned as an instance of pacific blockade, though it ultimately led to hostilities and a declaration of war on the part of Mexico. On the 21st of March, 1838, an ultimatum was presented to the Mexican Government by Baron Defauddis, the French Minister, demanding indemnity for the loss and injuries sustained by French residents in Mexico both in persons and in property in consequence of the various revolutionary disturbances.<sup>69</sup>

No reply was returned to the French ultimatum and after waiting a reasonable time, French naval forces off the coast of Mexico began to blockade the port of Vera Cruz on April 16. In a formal notice handed to Earl Granville, the British Ambassador at Paris, on July 1st, 1838, it was stated: "All the ports of Mexico have been declared to be in a state of blockade; and this blockade which became effective, so far as regards Vera Cruz, from the 16th of April last, will, without delay, have taken effect in like manner with respect to the other Ports of Mexico."<sup>70</sup> The blockade continued without actual hostilities for some months and on August 22, Louis Phillippe issued credentials to Admiral Baudin to proceed to Mexico, and to negotiate and conclude treaties. Baudin upon his arrival addressed a new ultimatum on October 27 to Cuevas, the Mexican Foreign Minister. He subsequently expressed his willingness to participate in a conference and, in doing so, he was at pains to give notice in a most formal manner that he would "not enter into negotiation whereof the suspension of the blockade be insisted on by the Mexican Cabinet as a preliminary." At the same time he announced that the blockading squadron would shortly be joined by "considerable reinforcements."<sup>71</sup>

It is hardly worth while to trace the weary and tortuous course of the negotiations at this stage, especially as the French demands were in the end substantially embodied in treaty form. After a few days of fruitless negotiation at Jalapa, Admiral Baudin withdrew stating in a formal note dated November 21st, 5 a. m., that he would wait in sight of Vera Cruz for a satisfactory answer until noon of the 27th, and should none be received by that time, he would "consider it his duty to commence hostilities immediately."<sup>72</sup> The French Admiral

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\* The first part of this article was published in the January, 1920 issue of the *COLUMBIA LAW REVIEW*, at p. 55.

<sup>69</sup> 27 *British State Papers* (1838-39) 1176.

<sup>70</sup> 26 *British State Papers* (1838) 726.

<sup>71</sup> 27 *British State Papers* (1838) 1184.

<sup>72</sup> *Ibid.* 1201.

lost no time, upon the expiration of the time limit, in carrying out his threat. He bombarded and reduced to possession the castle of San Juan de Ulloa. This led, on the 30th of November, to a decree of the Congress of Mexico, declaring that the Republic was in a state of war with the French Government by reason of the act of the French naval forces, in firing upon the town and castle on the 27th.<sup>73</sup> A Treaty of Peace and a Convention in settlement of claims were signed at Vera Cruz on March 9th, 1839. By Article 2 of the treaty it was agreed to submit to the decision of a third power two questions: first, whether Mexico was right in reclaiming from France either the restitution of Mexican ships of war captured by the French forces following the destruction or reduction of the fortress of Ulloa or a compensation equivalent to the value of the ships in case the French Government had already disposed of them; second, whether there was any occasion to give indemnities claimed on one side by the French, who had sustained damages in consequence of the law of expulsion, and on the other by the Mexicans who had suffered from the hostilities subsequent to the 26th of November. By Article 3, most favored nation privileges were accorded to diplomatic and consular agents, citizens of every class, and the ships and merchandise of the two countries.<sup>74</sup>

By Article I of the Convention it was provided in satisfaction of the claims of France for indemnities suffered by her nationals prior to the 26th of November, 1838, the Mexican Government would pay to the French Government the sum of 600,000 hard dollars, payment to be made in three installments of 200,000 each, drawn upon the principal administrator of customs at Vera Cruz at two, four and six months from the date of the ratification of the convention by the Mexican Government; these installments to be in full discharge of every pecuniary liability prior to the date just mentioned. By Article 2, the question whether Mexican ships and cargoes sequestered during the blockade and subsequently captured by the French following the declaration of war were to be considered as legally belonging to the captors was submitted to the arbitration of a third power as provided for in Article 2 of the treaty.<sup>75</sup> By the terms of the preliminary draft of the convention submitted during the pendency of the pacific blockade and before the outbreak of hostilities, Baudin had stipulated to restore to the Mexican Government, without liability for any indemnity for damage or injury during the period of sequestration, all vessels and ships under the Mexican flag with their cargoes detained by the French cruisers.

Gessner<sup>76</sup> says that upon the occasion of the Mexican blockade there was a lively discussion relative to the rights of a blockading

<sup>73</sup> 26 *British State Papers* (1838) 1123. <sup>74</sup> 29 *Ibid.* (1839) 223 <sup>75</sup>*Ibid.* 225.

<sup>76</sup> *Le Droit des Neutres sur Mer* 222, footnote.

power with respect to the vessels of the blockaded power. During the pacific blockade, France had sequestered Mexican ships and, after the bombardment of Vera Cruz and the declaration of war against France by Mexico, the French Admiral claimed the right to confiscate the vessels originally sequestered. The questions in controversy, were, as we have seen, submitted to arbitration by the treaty, though Gessner makes the statement that the French Government disapproved of the pretensions of its Admiral. England was chosen as arbiter and this author amiably adds that "its decision could not be doubtful since its manner of seeing and acting were wholly in accord with the procedure of the French commander."

Both Hall and Holland are authority for the statement that during the French blockade of Mexico, the ships of *third powers* were seized and brought in for condemnation. Hall says that they were restored at the termination of the blockade, no compensation being given to them for loss of time and expense. It is interesting to note that an act of Congress was passed on July 5, 1838, "to authorize vessels bound for the ports of Mexico and prevented from completing their voyage in consequence of the existing blockade of those ports, to enter and store their cargoes in the ports of the United States" upon the conditions therein prescribed.

#### BLOCKADE OF THE LA PLATA, 1838-45

During the decade beginning in 1838, the La Plata was twice for very considerable periods blockaded by European naval forces. The first blockade came as a climax of a controversy regarding the treatment generally of French subjects domiciled in the Argentine Republic, especially their liability to military service. Diplomatic correspondence over this affair began in 1830 and extended intermittently until 1838, when diplomacy having failed the French Admiral LeBlanc addressed a communication to the Governor-General of Buenos Aires dated the 24th of March, 1838, in which he demanded among other things, first, the suspension, so far as French citizens were concerned, of the application of the Argentine laws and regulations toward foreigners and an agreement to accord favored nation treatment to French citizens and their property until a treaty should be agreed upon; second, an acknowledgment to the French Government of the right of indemnity for French citizens who had been made to suffer unjustly in their persons or property by reason of the acts of the Argentine Government.<sup>77</sup> To this virtual ultimatum, the Minister of Foreign Affairs on the 26th of March, returned an unfavorable reply. Thereafter, two days later, the French Admiral addressed a circular to the foreign Ministers and consuls, giving notice that the port of Buenos Aires and

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<sup>77</sup> 26 *British State Papers* (1838) 955.

the coast of the river belonging to the Argentine Republic were in a state of rigorous blockade by French naval forces and that this blockade would be strictly executed until satisfaction was accorded. Ministers and consuls were requested to inform their governments and to make it known that the rigorous measures authorized by the law of nations would be undertaken against vessels which sought to enter the blockaded ports after having received notice of the blockade from one of the French ships of war. Merchant vessels actually in the port, or roadway retained the privilege of departing up to the 10th of May, at which time the prohibition was to become general and apply to vessels entering or departing.<sup>78</sup> Later, on the 1st of October, the Argentine Minister for Foreign Affairs offered to submit existing differences to the arbitration of Great Britain, but the British Minister presently reported that the French consul declined to accept "the pacific proposal which has been made to him."<sup>79</sup> About this time the French forces took possession of the island of Martin Garcia. In a declaration of war against Buenos Aires by Uruguay, dated the 24th of February, 1839, the French naval forces were referred to as "our allies."<sup>80</sup> It is plain however that France did not regard herself as actually at war.

The blockade continued until the autumn of 1840. On October 29 of that year, a convention was signed on board a French vessel. By its terms the Government of Buenos Aires acknowledged its liability for indemnities due to French citizens who had suffered losses and damages, the amount of these indemnities to be ascertained by six arbiters, three named on each side. In case of disagreement, the matter was to be referred to a third power designated by the French Government. The blockade of the Argentine ports was to be raised and the island of Martin Garcia evacuated by the French forces inside of eight days following the ratification of the convention by the Argentine Republic. The armament of the island was to be re-established as it was on the 10th of October, 1838. Two Argentine vessels of war captured during the blockade or two others of the same class with complete armament were to be placed at the disposal of the Argentine Government. By the same convention the Government of Buenos Aires agreed to respect the absolute and perfect independence of Uruguay, and, pending the conclusion of a treaty of commerce and navigation, most favored nation privileges were to be reciprocally accorded to nationals and their property in the territory of the other.<sup>81</sup>

This blockade of 1838 was conducted, as we have seen, by France alone and, though there is some indication that British sympathy was lacking, the official interest of Great Britain was limited to an inquiry by her ambassador at Paris as to the French intention respect-

<sup>78</sup> *Ibid.* 972.

<sup>79</sup> *Ibid.* 1018.

<sup>80</sup> 27 *British State Papers* (1839) 1216.

<sup>81</sup> *British State Papers* (1840) 1089.

ing the occupation of the island of Martin Garcia. The second blockade of 1845, however, was partly a joint affair. The British and French declaration and notification respecting the blockade of the port and coasts of the province of Buenos Aires was dated September 18, 1845. It was addressed to the Minister for Foreign Affairs of Buenos Aires and constituted a somewhat lengthy recital of grievances.<sup>82</sup> The aggressive war which Buenos Aires continued to wage against Uruguay was, it was pointed out, in violation of the treaties of 1828 and 1840, in the conclusion of which the British and French Governments had taken more or less directly a part. British and French subjects on the coast and in the interior were refused passports to leave the country and threatened with instant death if they attempted to escape. It was alleged that they were forced by menaces, too often followed by acts of violence, to sign protests petitioning to be armed against their own governments. The Buenos Arian soldiery were charged with having extinguished and destroyed a lighthouse on the island of Flores for the purpose of increasing the number of wrecks on this dangerous coast and it was asserted that shipwrecked crews had been robbed, stripped and detained as prisoners. In a word, foreign inhabitants were said to be subjected to the most inhuman and violent outrages, all forming part of the systematic plan of the Government of Buenos Aires, "scarcely known at the present day, excepting among certain tribes of savages."<sup>83</sup> The British Chargé at Montevideo on the 23rd of September notified the Minister of Foreign Affairs that the joint declaration just mentioned which had been delivered on the 20th would become effective on the 24th of the month and that a term of fifteen days had been granted for the departure of neutral vessels from the port of Buenos Aires. Commanders of the blockading forces were authorized in case of necessity to extend this term to the 24th of October. On the same day the French Chargé delivered an identical note to the same official.<sup>84</sup> The Foreign Office at London, upon receipt of dispatches from its South American diplomatic representatives, issued formal notice of this blockade on December 26, 1845.<sup>85</sup> On October 31, 1845, the British Foreign Office gave notice of the joint blockade of the port of Buco and other ports of the Republic of Uruguay which had been formally inaugurated on the first of the preceding August.<sup>86</sup>

There is some evidence that Lord Palmerston gave this particular blockade but lukewarm support. A letter to the British Ambassador at Paris, written by him, at the end of 1846, has been widely quoted by different writers in this connection. In it he declared that the French and English blockade of the La Plata

"had been from first to last illegal. Peel and Aberdeen have always

<sup>82</sup> 34 *British State Papers* (1845) 1266.

<sup>83</sup> *Ibid.* 1269. <sup>84</sup> *Ibid.* 1272. <sup>85</sup> *Ibid.* 1273. <sup>86</sup> *Ibid.* 1265.

declared that we have not been at war with Rosas; but blockade is a belligerent right and unless you are at war with a state, you have no right to prevent ships of other states from communicating with the ports of that state. Nay, you cannot prevent your own merchant ships from doing so."

He added: "I am glad we are out of such a system and if the French do not make haste and get out of it too they will get into trouble with other countries."<sup>87</sup> The British Government, however, did not formally raise this blockade, so far as it was concerned, until the 15th of July, 1847.<sup>88</sup> In the same letter Palmerston also stated, "I think it important, therefore, in order to legalize retrospectively the operations of the blockade, to close the matter by a formal convention of peace between the two powers and Rosas." Such treaty between Great Britain and the Argentine Government, of which General Rosas was the head, was signed November 24, 1849, ratifications were exchanged at Buenos Aires on May 15, 1850.<sup>89</sup> By its terms Great Britain agreed to return the Argentine vessels of war in its possession so far as possible in the same state as they were when taken and to salute the flag of the Argentine Confederation with 21 guns. The Argentine Government having, prior to the inauguration of the joint blockade, undertaken by similar measures to interfere with all vessels which touched at Montevideo, it was further agreed that both contracting parties should deliver to their respective owners all the merchant vessels with their cargoes taken by them during the blockade. Calvo states that:

"England, being the first to recognize the futility of its efforts and the arbitrary character of its pretensions, made a separate treaty with the Argentine Republic and left France to continue alone the intervention on the La Plata. The later did not long delay entering also into a pact of concessions and Admiral Léprédour signed on the 31st of August, 1850, a treaty of peace with the Argentine Republic."<sup>90</sup>

This same authority further declares that this blockade established a juridical precedent of great importance. A Brazilian vessel, *Le Comte de Thomar*, was seized during the blockade of the La Plata by a French cruiser stationed before the port of Buenos Aires. The Commission of Prizes sitting at Montevideo upon proof that the Captain had not received any special notice of the blockade which he was accused of having violated, ordered on the 6th of August, 1846, the vessel released but held that part of the cargo consisting of articles of contraband to be good prize. Upon appeal to the Conseil d'Etat this contraband was also on March 25, 1848, ordered to be released. The court held that in case of a simple blockade, that is to say, without

<sup>87</sup> 3 Dalling, *Life of Lord Palmerston* 325 *et seq.*

<sup>88</sup> 37 *British State Papers* (1850) 8.

<sup>89</sup> *Ibid.* 7.

<sup>90</sup> 3 Calvo, *op. cit.* 537.

a declaration of war, articles reputed to be contraband of war, seized on neutral vessels which have not received notification of the blockade, cannot, any more than the vessels themselves, be regarded as good prize.<sup>91</sup> The decision was based upon a letter of the Minister of Foreign Affairs to the effect that the French Government was not in a state of war with the Argentine Republic. The reporter of this decision does not seem to be altogether in accord with Calvo as to the value of this precedent. He indicates his opinion that a state declaring a pacific blockade has it within its discretion whether it will permit the passage of arms and munitions destined for the blockaded port and that this particular decision would appear to be more an act of liberality than a strictly juridical act.

Numerous other vessels seized during this blockade, some of them flying the English flag, were however, together with their cargoes, held to be valid prize on appeal to the Conseil d'Etat, the decisions mainly resting upon proof that notice of the blockade, duly mentioned in the vessel's register or log-book, had been given.<sup>92</sup>

#### BRITISH BLOCKADE OF NICARAGUA, 1842-44.

The facts concerning the British blockade of the port of San Juan de Nicaragua in 1842 and again in 1844 were involved in a good deal of obscurity until the English writer Hogan printed some hitherto unpublished documents at the Public Record Office in London.<sup>93</sup> From his statement, it appears that the blockade was established to enforce the claims of British subjects who were unable to obtain any satisfaction from the native courts for damage and plunder which they had sustained. The total British claim of fourteen thousand dollars was eventually paid. The first blockade, as appears from a notification of the British Foreign Office dated August 19, 1842, was instituted by Vice-Admiral Sir Charles Adam on the 17th of the preceding June. The Vice-Admiral issued a declaration, *inter alia*, as follows:

"All ships and vessels, under whatever flag they may be, will be turned away and prevented from entering the said port of San Juan de Nicaragua; and if, after any ship or vessel has been warned not to enter the said port, then and in that case any such ship or vessel that may attempt to break the blockade, will be seized and be dealt with according to the rules established for the breach of a *de facto* blockade."<sup>94</sup>

The blockade was raised on December 8, 1842.<sup>95</sup>

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<sup>91</sup> I Pistoye et Duverdy, *Traité des prises maritimes* (1859) 390.

<sup>92</sup> *Ibid.* 382-9.

<sup>93</sup> A. E. Hogan, *Pacific Blockade* (1908) 92. Mr. Hogan's work is by far the most satisfactory and comprehensive English study which has yet appeared on the subject of the pacific blockade.

<sup>94</sup> 34 *British State Papers* (1842) 1263.

<sup>95</sup> 34 *British State Papers* (1844) 1264.



The blockade of the same port in 1844, also by Sir Charles Adam, likewise grew out of the inability of British subjects to obtain satisfaction from the courts for their claims. Hogan says that a Mr. Bridge "was raided and plundered on October 23, 1841, by a band of thirty armed men and considerable damage was done. The men were arrested and confessed their participation and then, instead of being punished, were set at liberty and were rewarded by promotion in the regular army."<sup>96</sup> In another case, two Englishmen, Messrs. Glenton and Manning had obtained an award against one Solorzano but four years had elapsed without their being able to issue execution as the Nicaraguan Government sided with Solorzano. The notification of the British Foreign Office of June 10, 1844 stated that the blockade had been established on the 30th of the preceding March, and that "the measures sanctioned by the law of nations will be adopted and executed with respect to all vessels and cargoes attempting to violate the said blockade." The Foreign Office on November 1st, 1844, announced on the authority of a dispatch from Sir Charles Adam dated the 2nd of the preceding October that the blockade "was no longer in force."<sup>97</sup> Hogan states that beyond this bald statement "nothing further is known of the blockade or whether it actually achieved its object."<sup>98</sup>

#### BRITISH BLOCKADE OF GREECE, 1850

The British blockade of Greece in 1850 is commonly associated with the Pacifico affair, but this was only one item in a rather formidable list of grievances which culminated in coercive measures. Correspondence between Great Britain and Greece respecting the claim of one George Finlay to receive compensation for land which was enclosed in the garden of the royal palace at Athens began as early as October 18, 1842<sup>98a</sup> and extended over a number of years. On August 7, 1846, Sir Edmund Lyons, the British Minister at Athens, reported to Palmerston that an Ionian subject had been cruelly tortured by the police force at Patras.<sup>99</sup> On November 10th of the same year, he protested against the plunder of six Ionian boats at Salcina.<sup>100</sup> The Ionian Islands had been placed under a sort of protectorate of the powers by the Treaty of 1832. On January 20, 1848, Lyons addressed a protest to the Greek Minister for Foreign Affairs respecting the illegal detention in a guardhouse of the boat's crew of the British ship *Fantôme* and the alleged insults offered the commanders of this ship and of the *Spitfire* in connection with this incident.<sup>101</sup> Don Pacifico

<sup>96</sup> Hogan, *op. cit.* 95.

<sup>97</sup> 35 *British State Papers*, 1264.

<sup>98</sup> Hogan, *op. cit.* 98.

<sup>98a</sup> 39 *British State Papers* (1842) 410.

<sup>99</sup> *Ibid.* (1846) 254.

<sup>100</sup> *Ibid.* 315.

<sup>101</sup> *Ibid.* (1848) 216 *et seq.*

was a Jew born at Gibraltar and residing at Athens. Claiming protection as a British subject, he complained to the British Minister of outrages and losses of property sustained by him and his family on the 4th of April, 1847, when his house was broken into and plundered in open day by a mob made up in part of native soldiers.<sup>102</sup> Religious prejudice was at the bottom of the attack. On December 6, 1848, Minister Lyons recapitulated the unsatisfied demands of the British Government,<sup>103</sup> but to no purpose. Finally on November 30, 1849, Palmerston advised Mr. Wyse, who had succeeded Lyons at Athens, that Sir William Parker had been instructed to assist in obtaining a final settlement of the several long-pending claims. In the event of failure, measures "best calculated to obtain the required satisfaction and redress" were authorized.<sup>104</sup> Following this, on January 17, 1850, an ultimatum was served upon the Greek Foreign Minister demanding reparation with legal Greek interest at twelve per cent. from the date of each claim. Twenty-four hours was given for reply.<sup>105</sup> The answer was a formal refusal.

The first measure of reprisal was limited to an order on January 18, 1850, to prevent any Greek man-of-war from putting to sea.<sup>106</sup> The result was not satisfactory and a few days later Mr. Wyse reported to Palmerston that the blockade had been extended to Greek merchant vessels, the blockade of the Piraeus to be followed, if not effective, by that of Patras and Syra.<sup>107</sup> By the terms of a circular addressed to the consular body at Athens on the 24th of January, it was announced that the blockade was not to extend to foreign vessels nor to vessels chartered by foreign merchants prior to the notification. This policy led to many complaints that fictitious transfers were being greatly stimulated. One consul wrote to the British Minister, "I should not be surprised to see in a very short time the whole of the Greek trading vessels under the Russian colors."<sup>108</sup>

It is evident from the very voluminous correspondence which was submitted to Parliament in 1850 that the foreign representatives at Athens were for the most part hostile to the British pretensions. But subsequently the good offices of the French Government were accepted and Baron Gros proceeded to Athens. On March 1st, from on board his flagship in Salamis Bay, acting under instructions, Vice-Admiral Parker directed the suspension of coercive measures for a reasonably limited period and authorized the free ingress and egress of all vessels not actually in possession of Her Majesty's squadron.

<sup>102</sup> 39 *British State Papers* (1847) 333.

<sup>103</sup> *Ibid.* (1848) 481.

<sup>104</sup> *Ibid.* (1849) 484.

<sup>105</sup> *Ibid.* (1850) 491.

<sup>106</sup> *Ibid.* 498.

<sup>107</sup> *Ibid.* 508.

<sup>108</sup> *Ibid.* 586.

Those already seized were to be retained as pledges.<sup>109</sup> The number of Greek vessels captured up to the 18th of February was reported as "about forty-one". Most of them were merchant vessels.<sup>110</sup> The attempt to bring about a satisfactory solution of the differences fared badly. It was claimed first, that a premature announcement by the French Minister of the impending suspension of coercive measures had produced a most unfortunate effect upon the Greeks. At all events Baron Gros, whose powers were only those of a mediator and not of an umpire, found it impossible to reconcile the innumerable drafts and counter-drafts of suggestions and after about seven weeks abandoned the attempt in disgust.

Upon the failure of Baron Gros' mission, notice was formally given on April 25, of the renewal of the embargo on all vessels under the Greek flag. On the same day seven members of the diplomatic corps at Athens—the United States Minister not being among them—renewed an earlier protest against such action. To this the British Minister replied that every possible regard would be shown "to the interests of foreigners".<sup>111</sup> Matters now proceeded rapidly to final settlement. On April 26, the Greek Minister of Foreign Affairs in a note to Wyse requested him to specify the terms to which the Greek Government must subscribe to satisfy the British demands. To this note the answer was immediately returned, first, that the Minister for Foreign Affairs should address to Mr. Wyse an official letter expressing to the British Government the great regret felt by the Hellenic Government in consequence of the affair of the *Fantôme* and blaming the conduct of their agents and authorities on that occasion. Second, the payment of the sum of drachmas 180,038.49 or about £6,403 10s. as full satisfaction for all the pecuniary claims with the exception of that part of M. Pacifico's claim against Portugal. This last named claim arose out of alleged losses of property in Portugal between the years 1828 and 1834. It was Pacifico's contention that the loss of documents destroyed at Athens made it impossible for him to prove his case against the Portuguese authorities. With respect to this particular claim, the Greek Government in addition to the definite sum of damages before mentioned, was required to place in the hands of the British Minister the further sum of 150,000 drachmas or valid security for such sum, the British and Greek Governments then to enter into an investigation for the purpose of ascertaining the sum which would appear to be due Pacifico by Portugal, but which Pacifico had been precluded from recovering by the destruction of his papers. If it was found as a result of the investigation that Pacifico was entitled to a lesser sum than 150,000 drachmas, the balance was to be

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<sup>109</sup> 39 *British State Papers* 692.

<sup>110</sup> *Ibid.* 653.

<sup>111</sup> *Ibid.* 867.

restored to the Greek Government and on the other hand, if it should appear that he was entitled to a larger sum, then the Greek Government engaged to make good the difference. Finally, the British Government demanded a formal stipulation from the Greek Government that it would never bring forward itself any demand nor support any demands from other parties against the British Government on account of losses or injuries or any other matter arising out of the coercive measures adopted by the British squadron.<sup>112</sup> On the 28th of April, Wyse advised Palmerston that he had received at two o'clock on that day an unqualified acceptance of the British demands and during the course of the day, the required apology was made and a mandate delivered on the Bank of Greece to the amount of drachmas 336,068.49 to be applied in liquidation of the claims specified and to be held as a security for the investigation of Pacifico's credits on Portugal. The embargo or blockade was thereupon raised and the detained vessels released.

Several writers have been led into serious error in commenting upon this particular blockade. Wheaton, for example, says that it was "not a very dignified one, and ended in something like a farce."<sup>113</sup> He mentions that "three commissioners were appointed to examine Pacifico's claims. They had now swollen to £21,295 1s 4d, and the commissioners after duly examining it awarded him £150!" Holland and Moore make similar statements.<sup>114</sup>

The difficulty of these writers appears to be that they quite overlook the settlement at Athens. In point of fact, out of the 180,000 drachmas paid by Greece in liquidation of ascertained losses, Pacifico actually received 120,000 drachmas for losses sustained upon the plunder of his house, interest included, and 17,538 drachmas as compensation for personal sufferings. Finlay received 30,000 drachmas and the balance was distributed in adjustment of the other claims to which reference has been made.<sup>115</sup>

In other words the blockade was effective in producing a settlement of the British claims, though it seems to have led to not a little friction with France and Russia. Count Nesselrode, on the 19th of February, 1850, instructed the Russian Minister in London to address serious representations to the British Government and added:

"The reception which may be given to our representations may have considerable influence on the nature of the relations we are henceforth to expect from England,—let me add, on the position towards all the Powers, great or small, whose coast exposes them to a sudden attack. It remains, indeed, to be seen whether Great Britain, abusing the advantages which are afforded her by her immense mari-

<sup>112</sup> 39 *British State Papers* 875.

<sup>113</sup> Wheaton, *op. cit.* (4th ed. 1904) 414.

<sup>114</sup> Holland, *op. cit.* (1898) 135; 7 Moore, *op. cit.* (1906) 133

<sup>115</sup> 39 *British State Papers* (1850) 906.

time superiority intends henceforward to pursue an isolated policy, without caring for those engagements which bind her to the other Cabinets, whether she intends to disengage herself from every obligation as well as from all community of action, and to authorize all great Powers, on every fitting opportunity, to recognize towards the weak no other rule but their own will, no other right but their own physical strength."<sup>116</sup>

Both Russia and France had united with England in guaranteeing the independence of Greece. Shortly before Baron Gros' mission came to an end, Lord Palmerston and the French representative at London agreed, on the 18th of April, upon a basis of settlement of the whole controversy and France took deep umbrage at the decision to allow the settlement forced by Wyse to stand, although it did not essentially differ in substance from the London Convention, which did not reach Athens until about the 2nd of May. The British Government finally avowed its willingness to take the stipulations of the proposed London Convention as a guide for the remaining unsettled matters. It was, then, under the terms of this agreement, that the Pacifico claim founded upon the destruction of his documents was brought into adjustment. The 150,000 drachmas deposited with the British Minister at Athens were restored to the Greek Government and a commission assembled at Lisbon in February, 1851, made up of a French umpire and two other commissioners nominated on behalf of Great Britain and Greece. It made its report on May 5, 1851, and it was under this report that M. Pacifico received the sum of 150 pounds. The findings were based upon the discovery in the archives of the Cortes at Lisbon of the original petition of 1839. Although Pacifico was constantly in Portugal between the years 1834 and 1839, it did not appear that any application had ever been made by him to the British minister or consular authorities in Portugal to support his rights or redress his wrongs or that any steps had ever been taken either by himself or by his agents since the presentation of the petition to obtain a decision. The possibility that a few additional documents of no very great importance may have been destroyed at Athens was taken into account and it was recognized that Pacifico had incurred certain expenses during the investigation. It was upon this basis that the award was made.<sup>116a</sup>

#### BLOCKADE OF MESSINA AND GAETA, 1860

On the 6th of October, 1860, the revolutionary government of Garibaldi, which was established at Naples, declared a blockade of the ports of Messina and of Gaeta. In the notification which was addressed to the diplomatic and consular body accredited to Francis II, King of the Two Sicilies, announcement was made of the dispatch

<sup>116</sup> *Annual Register* (1850) 293-94.

<sup>116a</sup> 40 *British State Papers* 635.

of vessels of war necessary to make the blockade effective and the principals of the Treaty of 1856 were recognized as governing the regulation of foreign commerce.<sup>117</sup> On the 16th of the same month, Francis II, in an energetic protest, complained of the menace of a blockade by the ships of his own navy, which had turned against him. He argued that Garibaldi did not represent a government and that revolutionary Naples was not a nation. Accordingly the blockade was denounced as illegitimate, and the arbitrary interruption of neutral commerce, according to the law of nations, was an act of manifest piracy.<sup>118</sup> A few days later on the 19th of October, Casella, the Minister for Foreign Affairs, in a note to the representatives of foreign powers accredited to the Sicilian Court, complained that Vice-Admiral Persano of the Sardinian navy had publicly accepted the command of naval vessels belonging to the Two Sicilies, which the revolutionary government at Naples had placed at his disposal. He asserted that the revolting ships of war had received provisions and repairs at Genoa and he protested that the Government of Victor Immanuel, without a declaration of war and without conquest and while the official relations between the two countries were friendly, had committed an act which had no example in historical precedents.<sup>119</sup> The belligerent blockade of Gaeta was instituted on the 20th of January, 1861. In his formal notification, Vice-Admiral Persano recited that inasmuch as the land siege before Gaeta was already in operation and the port was fortified, and not a place of commerce, and inasmuch as the approach of some vessels obviously had for its aim the provisioning of the city and the rendering of aid to the besieged, and as the commerce of neutral powers would not be molested only to prevent such ships from entering into the maritime zone of Gaeta, therefore the blockade was definitely established in order to prevent aid to the besieged. The declaration of the 15th of April, 1856, governing the interests of neutral powers was recognized.<sup>120</sup> Gaeta capitulated on the 13th of February, and the blockade was raised at that time according to the notice of the Sardinian Minister in London.<sup>121</sup> The blockade of the citadel of Messina and neighboring ports was established on March 5. In the official communication, notice of this blockade was given by the Sardinian Minister at London, in which he stated that the commercial port of the city was not included in the order and consequently remained free from blockade and open to trade.<sup>122</sup> There seems to be little or no dispute among the writers who discuss this incident that the blockades of February and

<sup>117</sup> 1 *Archive Diplomatique* (1861) 69.

<sup>118</sup> *Ibid.* 70.

<sup>119</sup> *Ibid.* 71.

<sup>120</sup> *Ibid.* 344.

<sup>121</sup> 51 *British State Papers* (1861) 528.

<sup>122</sup> *Ibid.* 529.

March 1861, were distinctly belligerent. There is some difference of opinion as to the status of the action taken in October, 1860. Professor Holland reflects one view quite widely held in the statement<sup>123</sup> "In 1860 Sardinia, without going to war with the King of the Two Sicilies, blockaded Gaeta and Messina, in aid of the insurgents against his government. The blockade of the following year was an operation of war." The basis for the view that the earlier blockade was pacific in character undoubtedly finds some support in the protest of Casella, already noticed, that Sardinia's hostile attitude was in the face of friendly official relations and without any declaration of war. Calvo says in this connection, that the relations between the cabinets of Turin and Naples did not cease to be pacific and the King of Sardinia continued through his Minister to renew assurances of friendship for the King of the Two Sicilies.<sup>124</sup> On the other hand, assuming the revolution under Garibaldi had so far progressed as to justify, as Hogan points out, belligerent recognition, the participation by Sardinia in a blockade inaugurated by the insurgents hardly invests it with a pacific character. The incident is undoubtedly unique and its proper classification involved in some doubt.

#### BRITISH BLOCKADE OF DAHOMEY, 1876

The British blockade of the coast of Dahomey in 1876 was an act of reprisal short of war and as such is clearly entitled to classification as a pacific blockade, though it is not found in the list of such blockades as usually given. Originally ordered for the 1st of June, it was postponed by order of the British Government and finally made effective on the 3rd of July. The official notice stated that all the measures authorized by the law of nations and treaties would be enforced against vessels attempting to violate the blockade.<sup>125</sup> It appears from the Treaty of Peace and Commerce of May 12, 1877, that the blockade was instituted to enforce the payment of five hundred puncheons of oil in consequence of alleged insult and violence towards a British subject. The exportation of slaves was declared to be abolished and special protection accorded to British subjects engaged in trade. The fine was reduced to four hundred puncheons of oil on the condition that two hundred were to be paid at once and the remainder within twelve months. Under these circumstances the blockade was immediately raised.<sup>126</sup> The incident has a medieval flavor and may be dismissed as relatively unimportant. Nobody would contend, to be sure, that Dahomey was sufficiently civilized to be regarded as a member of the family of nations. It is therefore, in this sense, out-

<sup>123</sup> Holland, *op. cit.* 137.

<sup>124</sup> 3 Calvo, *op. cit.* (5th ed. 1896) 539.

<sup>125</sup> 67 *British State Papers* (1876) 529-30.

<sup>126</sup> 68 *British State Papers* (1877) 674-75.

side the sphere of international law. The thing to be noted here is, however, that the British Government felt it incumbent to issue the usual formal notification in strict conformity with the prevailing rule and the blockade itself continued for nearly a year. That it remains, in its essential characteristics, a typical case of a pacific blockade, admits of no doubt.

## CHILE AND BOLIVIA, 1879

A few writers classify the hostile demonstration by Chile against Bolivia in the early months of 1879 before war was formally declared, as another instance of pacific blockade. The available facts are obscure. Even Calvo who might be presumed to be accurately informed, speaks only from memory and says that the coast of Bolivia, in alliance with Peru was blockaded during the month of February by Chilean ships and that a declaration of war was first voted by the Chilean Chamber, on the 3rd of April.<sup>127</sup> The Annual Register for 1879 records:

"In the first months of 1879 the Chilean Government, under pretext of protecting some of its citizens at Antofagasta, on whom the Bolivian authorities had levied certain duties in defiance of the treaty terms, despatched to that place an iron-plated cruiser. President Prado, apparently anticipating the impending danger, at once tendered the good offices of the Peruvian Government to Chili and Bolivia. On the part of the former, President Pinto forthwith hastened to assure the Peruvian chargé d'affaires at Santiago that the presence of the Chilean ironclad in Mejillones Bay had no hostile object, and that he gladly availed himself of the mediation of Peru. On her part, Bolivia consented to the arbitration, and suspended provisionally the levy of duties on Chilean citizens. At the same time, however, she abruptly put an end to a concession accorded to a Chilean trading company at Antofagasta, on the plea of the non-fulfilment of certain conditions; whereupon, on February 15, the district was occupied by the Chilean troops, without any formal declaration of war, the Chilean chargé d'affaires still remaining at La Paz, the Bolivian capital."<sup>128</sup>

Whether any notification of a blockade was ever issued, whether neutral shipping was in any way interrupted, in a word, whether this incident partook of the characteristics of a blockade, even in its practical effect, nowhere satisfactorily appears. That a hostile demonstration preceded the formal outbreak of war is evident enough and if during this period a blockade was actually established, it was to this extent, probably of the "pacific" variety.

[TO BE CONCLUDED]

ALBERT H. WASHBURN

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<sup>127</sup> Calvo, *op. cit.* 539.

<sup>128</sup> *Annual Register* (1879) 304.